IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-2030

DAVIS S. HEDDEN,

Petitioner

vs.

THE STATE OF FLORIDA,

Respondent

RESPONSE TO
PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL OF FLORIDA,
SECOND DISTRICT

TO THE SUPREME COURT OF THE UNITED STATES:

The Petitioner has prayed that a Writ of Certiorari issue to review the judgment of the District Court of Appeal of Florida, Second District, entered in this proceeding on the 19th day of December, 1973. Hereafter follows the Respondent's statement in opposition thereto.

OPINIONS BELOW

Respondent takes note of the opinions appearing in the Petitioner's Appendix.

JURISDICTION

The Respondent admits those factual allegations relating to the entry of the judgment of the District Court of Appeal of Florida, Second District, on Decemb er 19, 1973. Further, Respondent agrees that the Petition for Writ of Certiorari was filed within ninety days of that date, as required by 28 U.S.C.A. §2101(c). Finally, the Respondent notes that the Petitioner attempts to invoke jurisdiction of the United States Supreme Court pursuant to 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether physical evidence derived from statements made by Petitioner during police interrogation without any Miranda warnings shall be excluded at a subsequent criminal trial

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment and the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case as set forth.

REASONS FOR NOT GRANTING THE WRIT

In the course of their investigation of the murder of Laisley Minor Crawford, officers of the Lee County Sheriff's Department finally reached the Hedden household. A They had been interviewing Mr. Crawford's neighbors. They had seen some of them at home, others they had taken to the jail or CID office. A-5. This routine call led to the discovery of evidence which contributed to Hedden's conviction.

Officer Clingenpeel and his associate, Officer Copithorne, went to the Hedden home and explained what they were doing and invited the Heddens to come down to the CID office. They agreed. During the course of the interview Clingenpeel inquired as to whether Hedden owned any guns. He replied that he did and invited the police to check them. A-9. Clingenpeel replied that they would like to and both Mr. and Mrs. Hedden signed consent to search forms. A

When they took the Heddens home they brought the guns to the officers. A-11. Mrs. Hedden got hers out of the kitchen drawer, and Mr. Hedden brought the rifle and ruger out of the bedroom. A-11. They then proceeded to walk around. In the course of the walk they came upon a van. Clingenpeel asked if they could search that and Mr. Hedden said go ahead. A-12. They found a blanket in the van with what looked like blood on it. When Clingenpeel called this to Mr. Hedden's attention, he said that he had carried an injured dog on it. On completing the visit,

the officers took the guns and the blanket and left the Heddens at their home and returned to their office. A-13.

While the Petitioner would have this court believe that the investigation had focused on the Petitioner and that they had taken him into custody as a suspect, the record affirmatively shows facts from which the trial court could conclude that this simply was not the case. Officer Clingenpeel even testified that Hedden had not become a suspect in his mind until a day or two after he had sent the gun to Miami for a ballistics check. A-13. A-15.

Deputy Wallace, one of the officers involved in the investigation of Crawford's death, testified that Hedden was not in custody when he was taken to be interviewed. A-1. He was not in handcuffs and after the interview he was taken home. A-3. He further testified that he was not a suspect at the time he signed the consent to search and agreed to surrender his guns for ballistics tests. A -4.

On this issue Clingenpeel testified that the Heddens were not forced or pressured in any way to come down to the office. A-7. They were not even reluctant to go. A-7. Even the Petitioner's reference to the cross-examination of Officer Clingenpeel on this matter is of little value. The state submits that a reasonable interpretation of Clingenpeel's response, "Okay, yes." At Petitioner's Appendix 5 is yes, I will answer the question, rather than yes, he was at the top of the list. This certainly does not conclusively establish that Hedden was a suspect in custody due a "Miranda warning."

While the question urged by the Petitioner is important and worthy of review in this court, the facts of this case simply do not present it. Rather, they present the question:

Was there substantial competent evidence in the record to support the trial judge's determination that Hedden was not a suspect or in custody and thereby entitled to a Miranda warning?

The state further submits that this question does not deserve review in this court.

WHEREFORE, the state respectfully prays this honorable court to make and enter its order denying Hedden's Petition for Writ of Certiorari.

Respectfully submitted,

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Of Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the District Court of Appeal of Florida, Second District, was mailed to Goron & Maney, P.A., 2919 First Financial Tower, Tampa, Florida 33602, attorneys for Petitioner, on this the day of October, 1974.

Of Counsel for Respondent

DIRECT EXAMINATION OF OFFICER WALLACE

"Q: To your knowledge at that point in time was Mr. Hedden a suspect?

"A: No, sir.

"Q: For what purpose was he at the station?

MR. GOLDSTEIN: Objection unless he can establish that he does know.

"A: Do you know for what purpose he was at the station?

"A: I was advised it was --

MR. GOLDSTEIN: I object. It is hearsay.

THE COURT: He said he was there, didn't he?

"A: Yes, sir.

THE COURT: And he was there and heard it.

Overruled. Let's proceed.

"Q: Were you present when Mr. Hedden was interviewed?

"A: Yes, sir.

"Q: Would you relate to the jury the contents of that conversation and interview?

"A: Yes, sir.

MR. GOLDBERG: Your Honor, I object to any interview between this officer and any other officers down at the Sheriff's Department which he has already indicated took place without a proper predicate being laid to the extent as to what reason Mr. Hedden was called down there and to the extent they have laid the predicate he was investigating a case; they had called Mr. Hedden down there and that they had advised him of his rights under the law.

MR. D'ALLESSANDRO: If it please the Court, an individual is advised of his rights when in the mind of the investigating law enforcement officer we have gone from investigation to interrogation, and that means the person has become a suspect.

THE COURT: Let me ask a question. Was the man in custody at that time or did he just drop in?

THE WITNESS: He was transported to the office by Investigators Clingenpeel and Copithrone, but he was not in custody, Your Honor.

MR. GOLDBERG: I object to this man saying that he was or was not in custody. If this man was not transported to the department by these two officers this man wasn't with him by his own testimony. He is not in position to testify what kind of custody he was in and he is also not in position to testify as to whether or not he was brought in for any specific purpose because he has already testified that this is what he thinks.

THE COURT: Miranda applies to in-custody interrogation and if he was not in custody he does not have to give him his rights.

MR. GOLDBERG: This witness can not establish he was not in custody. The only thing he can establish is that he was brought into the station --

THE COURT: I do not know what the witness can establish. Let's go a little further and find out what he can establish. He said he was present when he was brought in.

MR. GOLDBERG: But he said that the man was brought in by the officers in their car.

THE COURT: He said he was brought there. Ask him was he present when they were brought there?

MR. GOLDBERG: When they were picked up.

THE COURT: I did not use the word picked up. That has not occurred in the testimony yet. Let's don't create something that is not in the testimony. Cover that point, Mr. D'Allessandro.

"Q: Were you present when Mr. Hedden arrived at the CID Station?

"A: Yes, sir.

"Q: Was he in custody to your knowledge?

"A: No, sir.

"Q: Was he handcuffed?

"A: No, sir.

MR. GOLDBERG: Your Honor, I object. That is asking for a conclusion from a witness who does not know that this man was in custody.

MR. D'ALLESSANDRO: Your Honor, he has indicated that he was working with these officers. He observed no handcuffs. That calls for no conclusion. That is a direct observation. He knew the man was not in custody. He is working with these officers.

THE COURT: Let's go a little further. After this interrogation was he let go; did he go home?

THE WITNESS: Yes, sir, he was transported home.

THE COURT: Carried back home?

THE WITNESS: Yes, sir.

THE COURT: No warrant or anything was made for his arrest at that time?

THE WINTESS: No, sir.

DIRECT EXAMINATION OF OFFICER CLINGENPEEL

'Q: Mr. Clingenpeel, I want to direct your attention to July 4th. Did you have occasion to see the defendant, David Hedden, and his wife, on that date?

'A: Yes.

'Q" Now, would you tell the Court where?

"A: At their home and at my office and back at their home.

"Q: What time at their home, approximately?

"A: It was in the early afternoon.

"Q: How did it happen that you were at their home?

"A: Went out to contact the people, interview them, the same as I had been doing with everybody on the street.

"Q: What people?

"A: The Heddens.

"Q: Did you go out there specifically to see them?

"A: Yes.

"Q: Had you previous to that occasion talked to other neighbors in the area?

"A: Yes.

"Q: Who had you previously spoken to?

"A: Mr. Koenig who lived next door, the Taylors and the Robinsons, the Hensens, and right down --

"Q: Had you talked to any of them at their house versus at the jail or at the CID Station?

"A: I talked to Mr. Koenig at his house, Mrs. Taylor at her house, the Kersey brothers at my office.

"A: The Kersey brothers you talked to down at the jail or at your office at CID?

"Q: Right.

"Q" Now, when you went to the Hedden's house on July 4th did you go alone?

"A: No.

"Q: Who was with you?

"A: Copithorne.

"Q: At that time I am sure you were aware that the body of Mr. Crawford had been recovered?

"A: Yes.

"Q: You were aware that a crime had been committed?

"A: Right.

"Q: Were the Heddens when you went to their home on the 4th of July suspects?

"A: No.

"Q: Had you any knowledge or any facts or anything that would lead you to suspect in any way that they were connected with this offense?

"A: No.

"Q: Would you tell the court what occurred when you went to the Hedden home on the 4th?

"A: When we first went out?

"Q: Yes, sir.

"A: We went out and after I had been trying to contact everybody in the whole neighborhood, somebody that knew something, we asked them if they would come down. We talked to them in regard to any information that might help to solve this crime and they agreed to come down to the CID office.

"Q: Any force or pressure put on them to come down to the office?

"A: No.

"Q: Any threats made?

"A: No.

"Q: Any reluctance on their part?

"A: No.

"Q: Did they then go down to the station?

"A: Yes.

"Q: Did they give you a statement?

"A: We just had an oral interview.

"Q: Did you at the time you went to see Mr. Hedden's home on the 4th of July have any personal knowledge that he had guns in his home?

"A: I took him back to the house and I knew at this time he had guns.

"A: You knew after you left the station?

"A: Yes.

"Q: But I mean when you first went to his home?

"A: No.

"Q: When you got to the station or had any conversation how did you learn that he had guns at his home?

"A: In the interview I asked him if he owned any guns. I asked him about guns and he advised me he owned a rifle and a pistol.

"A: And then did you inquire further about that?

"A: Yes.

"Q: What did you ask him?

"A: What type, and he told me he had a 22 rifle and a 22 Ruger and a 25 automatic he had purchased for his wife.

"Q: Did you ask if you could see those items?

"A: Yes.

"Q: What was his reply?

"A: Not so much we asked; he just volunteered that I could check them if we wanted to and I said I would appreciate it, we would like to.

"Q: Did Mr. Hedden know that you were question-

ing him or securing information about Mr. Crawford's death?

"A: Yes.

"Q: Did Mr. Hedden sign any consent to search form that date?

"A: Yes, he did.

"Q: Where?

"A: At the office.

"Q: Do you have that form with you?

"A: Yes. Do you wish to see it?

"Q: Yes, sir. Did Mrs. Hedden sign one?

"A: Yes, she did.

"Q: That same day?

"A: That same day.

"Q: Would you read Mr. Hedden's form for the Court and Mrs. Hedden's?

"A: Under the heading of Lee County Sheriff's Department, Investigation Division, date: 7-4-72: "To Whom it May Concern: I, David S. Hedden, of Elmwood Road, Alva, Florida, being over the age of twenty-one years and being of sound mind, do hereby give my consent and permission, knowing it is not mandatory, to Lee County Deputy Sheriffs Chuck Clingenpeel, Bill Copithorne, to search the following property: My residence, 551 Elmwood, which I own

or have under my control for the purpose of attempting to locate fireamrs, silencers, ammo. I will now sign this waiver in front of witnesses of my own free will. Signed: David S. Hedden. Witnessed: Chuck Clingenpeel, William E. Copithorne.

"Q: Now, at the top it says 'I, David S. Hedden.' That is in writing. Who wrote that name in?

"A: I did.

"Q: And Elmwood Road is in writing?

"A: I wrote that.

"Q: And then the names Chuck Clingenpeel and Bill Copithorne and 'My residence, 551 Elmwood, and firearms, silencers, ammo,' that is all in handwriting?

"A: Mine.

"Q: Was that filled in prior to Mr. Hedden signing it?

"A: Yes.

"Q: Did he read it?

"A: Yes.

"Q: Now, I believe you have one by Mrs. Hedden. Is that the same day?

"A: Yes, the same day. It must be in one of my other files.

"Q: While you are looking for it I will continue to ask you a few questions.

When you went back out to the house with Mr. a Mrs. Hedden did you have to look for the guns or did they give them to you?

"A: No, they give them to us.

"Q: With any reluctance?

"A: No.

"Q: Do you know where they went to get them?

"A: Mrs. Hedden got hers from the kitchen drawer. Mr. Hedden brought the rifle and ruger out of the bedroom.

"Q: Did you make any view or search of the premise at all other than inside the house?

"A: No more than just walking around. We did not search any at all.

"Q: Were they aware that you were doing so?

"A: Yes.

"Q: Was there any reluctance on their part?

"A: No, sir.

"Q: I believe you also, when you left, took a blanket with you?

"A: Yes, sir.

"Q: Would you tell the Court how it came to be that you received that blanket?

"A: There was a van sitting there and we walked by the van and I think we asked permission

could we search through the van too or look through it and if he would say no we would stop and he said go ahead and search.

"Q: Mr. Hedden said go ahead?

"A: Yes.

"Q: You looked in the van?

"A: Right, and there was a blanket.

"Q: And you took the blanket out?

"A: Right.

"Q: Did Mrs. Hedden make any comments about the blanket?

"A: Not that I recall.

"Q: Do you recall any comments along the line where she might possibly have said, well, it is an old one, you can have it, or don't give it back, or something of that nature?

"A: She may have, but I don't recall.

"Q: Did you bring to anyone's attention that you saw something on the blanket which you thought to be blood?

"A: Yes.

"Q: Whose attention did you bring that to?

"A: Mr. Hedden's.

"Q: What did he say?

"A: He said he had prior to this time picked up a dog along the road that had been in-

jured or struck by a vehicle and placed it in the van.

"Q: Do you recall any comment about it might possibly be possum blood?

"A: No. It is supposed to be a dog that had been injured.

"Q: Go ahead with Mrs. Hedden's.

"A: It was on the 4th of July. David Hedden signed that on the 6th of July. Mrs. Hedden signed one.

"Q: Would you speak slower because the jury has to understand you.

"A: On the consent to search on July 4th, it was signed only by David Hedden. Mrs. Hedden signed one on July 6th.

"Q: The way I understand you went down there, they came with you to the station, you talked, you went back, they gave you the weapons and the blanket and you came back to the jail?

"A: Right.

"Q: Did they remain at home?

"A: Yes.

"Q: Now, you are under oath sir. When you returned to the jail was David Hedden a suspect at that point in time?

"A: No, I couldn't say he was a suspect.

"Q: When did he become a suspect in your mind?

"A: He became a suspect when the lab reported that the cartridge found at the scene was definitely fired by the pistol that I had submitted for examination.

"Q: Now, the cartridge, I believe you previously testified, you received from Buddy Parker -- no, excuse me. That is a different one. You picked up a cartridge at the scene on the night in question?

"A: Right.

"Q: You received the gun on July 4th. Do you recall when you took the gun and that cartridge to Miami?

"A: I believe it would have been the 5th.

"Q: Do you recall when you received word from Miami as to the results of that examination?

"A: To the best of my knowledge I believe I received a telephone call within the next day or two and then I received a written report later.

"Q: But when you received the phone call that is when he became a suspect?

"A: Right.

"Q: Is that why on the 6th when you went out you got a search warrant to search his property?

"A: That is correct.